

2014 WL 10500956 (Minn.Dist.Ct.) (Trial Pleading)

District Court of Minnesota.

Fourth Judicial District

Hennepin County

Michael BARLOW, Plaintiff,

v.

HOSPITALITY CENTER FOR CHINESE INC., Defendant.

No. 27CV1400434.

January 9, 2014.

### **Amended Complaint**

[Todd M. Johnson](#) (#52061), [Scott A. Johnson](#) (#124606), Johnson Law Group LLP, 10580 Wayzata Boulevard, Suite 250, Minnetonka, MN 55305, (952) 525-1224, for plaintiff.

NOW COMES the plaintiff, Michael Barlow (“Barlow” or “plaintiff), and for his Complaint against defendant Hospital Center For Chinese Inc. (“HCFC” or “defendant”), herein alleges and states:

### **THE PARTIES**

1. At all times material herein, plaintiff Barlow was a Minnesota resident, living at 3853 Georgia Avenue North, Crystal, MN, 55427-1563.

2. The defendant HCFC is, upon information and belief, a Minnesota Corporation with headquarters at 1407 Cleveland Avenue North, St. Paul, Minnesota, 55108-1410. HCFC is in the business of providing hospitality and support services for Chinese students matriculating at the University of Minnesota.

### **BACKGROUND FACTS**

3. Michael Barlow, born XX/XX/1945, is a Vietnam veteran whose work history since the service has included hazardous waste disposal, home construction, and handyman. At present, Mr. Barlow's primary source of income relates to his work as Santa Claus, including most recently the Santa Claus for the Minneapolis Macy's Department Store.

4. In addition to his work as Santa Claus, Mr. Barlow has been engaged in a vast array of volunteer work. This has included twelve years with Minnesota Green Troops (cutting lawns for deployed soldiers); four years with Santa America of Minnesota (assisting with a variety of fund raisers in his role as Santa Claus); thirteen years with Habitat for Humanity; eight years with Hammer for Hope (community help for the **elderly**); ten years with Cornerstone Church; work for the Chanhassen Christmas House, the Courage Center,; **Abused** Women of Minnesota, and a variety of churches.

5. Since 1999, Mr. Barlow has also worked as a volunteer with the defendant HCFC, in particular the past ten years assisting with a summer picnic sponsored by HCFC for Chinese students in the Minneapolis-St. Paul area (the “HCFC Summer Picnic”). That picnic included food offered in a park setting, as well as other welcome and informational events.

6. During the summer of 2012, Mr. Barlow was asked by the HCFC designates who were supervising both the event and the volunteers operating the various stations at the event (the “HCFC Summer Picnic Supervisors”) to operate a “corn” cooker/

roaster at the event, to be hosted upon property owned by the University of Minnesota. Mr. Barlow agreed to do so. He was informed by the HCFC Summer Picnic Supervisors that he would be one of two persons operating the cooker. The second person would take over for him after two to three hours that the roaster was operated.

7. Prior to the summer of 2012, Mr. Barlow had himself served as an organizer/supervisor of the HCFC. Due to the pace of operating the cooker and the heat involved, when Mr. Barlow worked as a volunteer organizer/supervisor, he had assigned four persons to work the corn cooker. Two persons would operate the cooker at a time. Mr. Barlow would also assist those four persons, occasionally stepping in to provide a break to the persons then working the cooker.

8. The 2012 HCFC Summer Picnic was held on August 25, 2012. The venue for the picnic was a park located across from the HCFC Fraternity House, where food and other stations were placed throughout the property. Because of the nature of the property, the various stations were stretched along a line which extended more than 100 feet amidst trees and awnings set up for the festival. Mr. Barlow was instructed to operate the corn cooker at the far end of the setup. A set of trees separated Mr. Barlow from the HCFC Summer Picnic Supervisors. From the assigned position of the cooker, it would have been impossible for Mr. Barlow to communicate with the HCFC Summer Picnic Supervisors without leaving his station.

9. On the day of the 2012 picnic, and before arriving at the park, Mr. Barlow was also assigned to prepare chicken for the event. Accordingly, on that date, Mr. Barlow began his duties at around five in the morning preparing chicken. After three to four hours of preparing chicken, Mr. Barlow left to set up the corn cooker at the park where he had been told to do so by the HCFC Summer Picnic Supervisors. Before starting the cooker, Mr. Barlow was assured by the HCFC Summer Picnic Supervisors that they would send a replacement cooker to take over the roasting duties at the corn station within two to three hours.

10. With these assurances, Mr. Barlow started to operate the corn cooker commencing at around eleven in the morning of August 25, 2012.

11. The corn cooker/roaster operated at a temperature of in excess of 500 degrees. Mr. Barlow had to shuck the corn to be inserted into the roaster, which would continually pass through the roaster, coming out fully cooked and ready to eat. Accordingly, Mr. Barlow was continuously preparing the corn, putting it onto the roaster and removing it from the roaster. This necessitated that he stay in close proximity to the roaster at all times.

12. Because of the extraordinary temperatures at which the cooker operated, and the proximity of picnic guests and others around the cooker, the cooker represented a serious hazard and could not be left alone by the person operating it.

13. Mr. Barlow proceeded to cook corn. In preparation for his duties, and knowing it would be a warm day, Mr. Barlow, who weighed in excess of 290 pounds, had brought bottles of water and Gatorade to remain hydrated.

14. Rather than the promised period of two to three hours of duty at the corn cooker, Mr. Barlow was forced to work the cooker continuously for a period of five hours, producing in excess of sixteen hundred ears of corn.

15. Throughout the time that Mr. Barlow worked, the HCFC Summer Picnic Supervisors failed to send anyone to take his place. Because of the danger of leaving the cooker unattended, Mr. Barlow could not leave his station to seek help. Moreover, there was no one assisting Mr. Barlow whom he could send to inquire about replacement volunteers to take his place at the corn cooker.

16. Mr. Barlow finally shut down the cooker at around four in the afternoon or soon thereafter. By that time, he had long exhausted his water and Gatorade and was severely dehydrated.

17. Mr. Barlow began to walk away from the cooker once it had reached a safe temperature. As he did so, he collapsed, landing on the sidewalk on his right shoulder and side.

18. After Mr. Barlow was revived, he went home and from there was taken to the Veterans Administration Hospital by his wife. At the hospital emergency room it was determined that Mr. Barlow had suffered from heat stroke.

19. Mr. Barlow was subsequently informed by the HCFC Summer Picnic Supervisors that they had simply forgotten about his station when distributing replacement volunteers throughout the park. For this reason, they had neither sent any replacements to take his place at the corn cooker throughout the entirety of the picnic, nor checked upon his status during the course of the day.

20. Following his episode of heat stroke and resulting fall Mr. Barlow attempted to continue with his daily work and volunteer activities, but suffered severe pain in his right shoulder and his cervical neck that impeded those activities. Mr. Barlow eventually had an MRI taken of shoulder and neck.

21. The MRI confirmed that Mr. Barlow had suffered a “massive cuff tear” to his right shoulder from his fall, as well as nerve impingement at the C5-6 and C6-7 level. The cuff tear was progressively rendering Mr. Barlow unable to use his right arm for his usual work or other activities, including performing physical labor consistent with his volunteer practices; firing his rifle for hunting; cutting wood; doing yard or handyman work, or even sleeping comfortably. Of greatest impact to his lifestyle was a limitation upon his ability to lift children onto his lap during the Christmas season.

22. Mr. Barlow was eventually informed by a TRIA Orthopedic physician that the only procedure which might restore some function to his increasingly debilitated right arm was a reverse total shoulder arthroplasty. On September 3, 2013, Mr. Barlow underwent that shoulder procedure.

23. Mr. Barlow achieved some improvement in shoulder function from the September, 2013 surgery. There are severe limitations which remain, however, particularly given that the shoulder procedure cannot be repeated. Accordingly, Mr. Barlow must now work within stringent range of motion and weight limitations, which make many of his former activities permanently beyond his capacity-including the bulk of his volunteer activities.

24. The defendant HCFC owed Mr. Barlow a duty of care which it breached because, among other actions:

(a) HCFC placed Mr. Barlow in a position of hazard of dehydration and heat stroke absent proper precautionary measures under HCFC's control (such as an opportunity for breaks and access to additional water as needed);

(b) HCFC withheld promised measures which would have enabled Mr. Barlow to avoid dehydration and heat stroke;

(c) HCFC placed Mr. Barlow into an activity and situation in which he was deprived of normal opportunities to protect himself from heat stroke and dehydration through either breaks or the chance to leave his station to seek help or water;

(d) HCFC undertook the responsibility to provide Mr. Barlow the assistance he required to perform his tasks safely, then withheld that assistance.

25. As a proximate result of defendant HCFC's violation of its duties of care, Mr. Barlow suffered heat stroke, fell and was severely injured.

## **CLAIMS**

### **NEGLIGENCE**

26. Plaintiff restates and incorporates herein by reference all allegations in paragraphs 1-25 above.

27. Defendant, by the above-described conduct, breached a duty of care owed to plaintiff, which resulted in his injury.

28. Defendant is liable, in negligence, to plaintiff for his injuries, in an amount to be proven at trial.

WHEREFORE, plaintiff prays for relief as follows:

1. For money damages against the defendant in an amount in excess of \$50,000;
2. For his attorneys' fees and costs; and
3. For such further and other relief as the said Court in the premises may deem just and equitable.

Dated: January 9, 2014

JOHNSON LAW GROUP LLP

*s/Todd M. Johnson*

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ATTORNEYS FOR PLAINTIFF

#### **ACKNOWLEDGMENT**

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to [Minn. Stat. § 549.211](#) to the party against whom the allegations in this pleading are asserted.

Dated: January 9, 2014

*s/Todd M. Johnson*

Todd M. Johnson (#52061)

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